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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,324	02/13/2002	Fredrick S. Liljegren		4559

7590

04/30/2003

Carla C. Mattix  
Division of General Law, Office of the Solicitor  
U.S. Department of the Interior, MS 6531  
1849 C Street NW  
Washington, DC 20240

EXAMINER

ELLINGTON, ALANDRA

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 04/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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# Office Action Summary

Application No.

10/073,324

Applicant(s)

LILJEGREN ET AL.

Examiner

Alandra N Ellington

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2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on amendment filed on 12/10/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-20 is/are allowed.
- 6) ☒ Claim(s) 1,2,7,8,11 and 12 is/are rejected.
- 7) ☒ Claim(s) 3-6,9,10 and 13-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The amendment filed on 12/10/02 has been entered and filed in the case.

#### ***Drawings***

2. The objections made in reference to the drawings have been addressed and corrected in the applicant's amendment, therefore, the objections have been withdrawn.

#### ***Specification***

3. The objections made in reference to the specification have been overcome by the applicant's amendment and will be withdrawn.

#### ***.Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,2, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Dailey et al (5,044,200).

A. With respect to Claim 1, Dailey et al discloses a measuring cup device comprising a measuring cup 20 including measurement markings 29 along at least one side 28 thereof and a closed bottom end (col. 2 lines 34-40 {Fig. 4}); and a plurality of legs 22 ({Fig. 5}), formed integrally with said cup 20 and extending beyond the bottom end of said cup 20 (col. 2 lines 21-26), for supporting the device in an upright position in the ground, said

legs 22 including pointed end portions for enabling the legs 22 to be stuck into the ground to support the device (col. 2 lines 15-21 {Fig. 2}).

B. With respect to Claim 2, Dailey et al discloses the device of Claim 1 wherein said cup 20 is of a tapered shape having a smaller end terminating at said closed bottom ({Figs. 3 and 4}).

C. With respect to Claim 7, Dailey et al discloses the device of Claim 7 wherein said cup 20 includes an annular edge defining an opening at an end of said cup 20 opposite to said closed end (col. 2 lines 24-36 {Fig. 4}).

5. Claims 1, 2, 7, 8, 11, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Myers (3,039,304).

A. With respect to Claim 1, Myers discloses a device comprising a measuring cup 11 including measurement markings 18 along at least one side 14 thereof and a closed bottom end 16 (col. 1 lines 43-52 {Figs. 1 and 2}); and a plurality of legs 24 ({Fig. 2}), formed with said cup 11 and extending beyond the bottom end 16 of said cup 11, for supporting the device in an upright position in the ground, said legs 24 including pointed end portions for enabling the legs 24 to be stuck into the ground to support the device (col. 2 lines 3-8, 24-30 {Figs. 1 and 2}).

B. With respect to Claim 2, Myers discloses the device of Claim 1 wherein said cup 11 is of a tapered shape having a smaller end terminating at said closed bottom 16 ({Figs. 1 and 3}).

- C. With respect to Claim 7, Myers discloses the device of Claim 1 wherein said cup 11 includes an annular edge 17 defining an opening at an end of said cup 11 opposite to said closed end 16 (col. 1 lines 52-55 {Fig.3}).
- D. With respect to Claim 8, Myers discloses the device of Claim 7 wherein said cup 11 includes a plurality of flanges 19,20 extending outwardly from said annular edge 17 at equally spaced locations therearound and wherein said legs 24 are formed with said flanges 19,20 (col. 1 lines 60-70, col. 2 lines 8-14 {Figs. 2 and 3}).
- E. With respect to Claim 11, Myers discloses the device of Claim 1 wherein said cup 11 and said legs 24 are of shape permitting stacking of said device on a further said device ({Figs. 1 and 2})
- F. With respect to Claim 12, Myers discloses the device comprising a tapered vessel 11 having an angled side wall 14 including measurement markings 18 therealong (col. 1 lines 43-52 {Figs. 1 and 2}), an open top 17, a plurality of flanges 19,20 extending outwardly from said top 17, and a closed bottom 16, and a plurality of legs 24 formed with said vessel 11 and extending downwardly from said flanges 19,20 beyond said bottom 16, for supporting the device, said vessel 11 and said legs 24 being of such a shape that said device can be stacked on a further said device (col. 2 lines 3-8, 24-30 {Figs. 1 and 2}).

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6. Claims 3-6, 9, 10, and 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Allowable Subject Matter***

7. Claims 17-20 are allowed.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

The examiner position is that the newly cited prior art clearly teaches and fairly suggests the claimed invention. The examiner wanted to point out to the applicant that claiming a *stackable device* is narrative, therefore, many references can be found that would read on that information (from the broadest interpretation). Myers (3,039,304) shows a rain gauge that can stacked or placed upon another gauge with the same characteristics and features. The applicant also states that the claimed invention is for evaluating performance of a water sprinkler, *ie to measure the depth of water applied by a sprinkler*. Dailey et al (5,044,200) and Myers (3,039,304) both teach devices that perform similar functions. For example, Dailey et al discloses a device that can function "to tell the homeowner approximately how much water has been sprinkled or has rained on the lawn" (col. 3 lines 3-8). Moreover, Myers teaches a rain gauge that is used to "measure the quantity of water, in inches, being sprinkled onto the lawn" (col. 2 lines 40-44).

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alandra N. Ellington whose telephone number is (703)305-4449. The examiner can normally be reached on Monday - Friday, 6:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703)305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are (703)306-7382 for regular communications and (703)305-3839 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

Alandra Ellington  
Art Unit 2855



ane  
March 21, 2003



HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800